

CITY OF HAYWARD

AGENDA REPORT

AGENDA DATE 09/20/05

AGENDA ITEM 2

WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT: Amendments to Stormwater Management and Urban Runoff Control Ordinance and to Section 7-1.65 of the Public Works Ordinance Related to Driveway Materials

RECOMMENDATION:

It is recommended that the City Council introduce the attached ordinance amending the Stormwater Management and Urban Runoff Control Ordinance and the Public Works Ordinance related to driveway materials.

BACKGROUND:

The Federal Clean Water Act requires local municipalities to implement measures to control pollution from their storm sewer systems to the maximum extent practicable. Under the auspices of the Clean Water Act, as well as other Federal and State legislation since 1990, the San Francisco Regional Water Quality Control Board (RWQCB) has issued and re-issued an area-wide National Pollutant Discharge Elimination System (NPDES) Permit (hereinafter referred to as "Permit") to the 17 co-permittees of the Alameda Countywide Clean Water Program for the discharge of stormwater from urban areas in Alameda County.

Per the requirements of the original permit, the City of Hayward adopted an ordinance in 1992 which added Article 5, the Stormwater Management and Urban Runoff Control Program, to the City's Municipal Code. The original ordinance established discharge regulations and requirements for various pollutants, defined the City's level of responsibility for program inspection and enforcement, and coordinated the various programs available for addressing pollution control issues, such as Best Management Practices.

In 2003, the RWQCB substantially amended the City's original permit from 1992. This revised version of the Permit substantially increased requirements relating to new development and redevelopment projects, including reduction of pollutant discharges, to the maximum extent practicable, through incorporation of treatment and other appropriate source control and site design measures. The amended Permit also establishes minimum design criteria and maintenance requirements for such measures in certain types of development projects.

As a result of these new regulations, the City, in concert with the other 16 agencies that comprise the Alameda Countywide Clean Water Program, participated in several meetings over the course of one year in order to clarify what was required so that each agency may comply with the amended Permit. The result of this coordinated effort was the successful


development of revised Site Design Standards and Guidance for new development and redevelopment projects in Hayward. In addition, it was noted by City staff during this time that the existing stormwater ordinance should be updated to include the new requirements of the permit.

After further discussions among staff from several departments, the existing ordinance was reviewed and amended to include two key components of the revised permit. In brief, these new sections of the ordinance clearly define the need for developers to implement stormwater treatment measures and that all measures will be reviewed and approved by appropriate City staff prior to the issuance of any building permits. Furthermore, the revised ordinance states that all stormwater treatment measures are to remain in effect for the life of the development and may be inspected by designated staff, if needed, to ensure compliance with the provisions of the ordinance. Other minor, clarifying modifications to portions of the existing ordinance, as well as a section that addresses requirements for the outside storage of materials, have also been included as a result of reviewing other cities' ordinances.

It should be noted that more specific development-related language, such as treatment measures and sizing criteria, are addressed in the above-noted revised Site Design Standards & Guidance and communicated to developers prior to the submission of plan documents; a requirement to adhere to such standards and guidance is clearly enumerated and referenced in the revised ordinance.

In addition to the above mentioned revisions to the Stormwater Management and Urban Runoff Control Ordinance, a minor change was made to Section 7-1.65 of the Public Works Ordinance related to the use of certain types of material that are allowed during the construction of new driveways. In order to ensure consistency with the new stormwater regulations, the ordinance now allows, besides Portland cement concrete, asphaltic concrete, bricks, and pavers as acceptable materials due to their pervious qualities.

Prepared and Recommended by:


Robert A. Bauman, Director of Public Works

Approved by:


Jesús Armas, City Manager

Attachments: Exhibit A: Stormwater Management and Urban Runoff Control Ordinance
Exhibit B: Public Works Ordinance - Section 7-1.65

DRAFT

NH
9/16/05

ORDINANCE NO. _____

**ORDINANCE AMENDING CHAPTER 11, ARTICLE 5 OF
THE HAYWARD MUNICIPAL CODE RELATING TO
STORMWATER MANAGEMENT AND URBAN RUNOFF
CONTROL**

Section 1. Sec. 11-5 of Chapter 11, Article 5 of the Hayward Municipal Code is hereby amended to read in full, as follows:

TITLE, PURPOSE, AND GENERAL PROVISIONS

"SEC. 11-5.10 TITLE. This article shall be known as the "City of Hayward Stormwater Management and Urban Runoff Control Ordinance" and may be so cited.

SEC. 11-5.12 PURPOSE AND INTENT. The purpose of this article is to ensure the future health, safety, and general welfare of the residents of the City by:

- a. eliminating non-stormwater discharges to the municipal separate storm sewer;
- b. controlling the discharge to municipal separate storm sewers from spills, dumping, or disposal of materials other than storm water; and
- c. reducing pollutants in storm water discharges to the maximum extent practicable.

The intent of this ordinance is to protect and enhance the water quality of watercourses, water bodies, and wetlands in a manner pursuant to and consistent with the Clean Water Act.

SEC. 11-5.13 DEFINITIONS.

- a. Any terms defined in the federal Clean Water Act, and acts amendatory thereof or supplementary thereto, or defined in the regulations for the stormwater discharge permitting program issued by the Environmental Protection Agency on November 16, 1990 (as may from time to time be amended) as used in this article shall have the same meaning as in that statute or those regulations. Specifically, the definitions of the following terms included in that statute or those regulations are hereby incorporated by reference, as now applicable or as may hereafter be amended: administrator, discharge of a pollutant, illicit discharge, navigable waters, point source, pollutants, pollution, publicly owned treatment works, and stormwater. These terms are presently defined as follows:

- (1) **Administrator:** The Administrator of the United States Environmental Protection Agency.
- (2) **Development Project:** "Development Project," as used in this Article, refers to both Group 1 and Group 2 projects as defined in NPDES Permit No. CA0029831 and any amendment or revision thereto, or reissuance thereof. However, the City has the authority to expand this definition, when deemed appropriate, to include any development project.
- (3) **Discharge of a Pollutant:** (a) Any addition of any pollutant to navigable waters from any point source, or (b) Any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.
- (4) **Illicit Discharge:** Any discharge to the City storm sewer system that is not composed entirely of stormwater except discharges pursuant to a NPDES permit and discharges resulting from fire fighting activities.
- (5) **Navigable Waters:** All navigable waters of the United States; tributaries of navigable waters of the United States; interstate waters; intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in inter-state commerce; and intrastate lakes, rivers, and streams which are utilized for industrial purposes by industries in interstate commerce.
- (6) **Point Source:** Any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
- (7) **Pollutants:** Dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharge into water.
- (8) **Pollution:** The man-made or man induced alteration of the chemical, physical, biological, and radiological integrity of water.

- (9) Publicly Owned Treatment Works (POTW): Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of liquid nature which is owned by a state or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.
 - (10) Significant Redevelopment Project: "Significant Redevelopment Project," as used in this Article, refers to both Group 1 and Group 2 projects as defined in NPDES Permit No. CA0029831 and any amendment or revision thereto, or reissuance thereof. However, the City has the authority to expand this definition, when deemed appropriate, to include any redevelopment project.
 - (11) Stormwater: Stormwater runoff, snow melt runoff, and surface runoff and drainage.
- b. When used in this article, the following words shall have the meanings ascribed to them in this section:
- (1) Authorized Enforcement Official: Individuals designated by the City Manager.
 - (2) Best Management Practices (BMPs): Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
 - (3) City: The City of Hayward.
 - (4) Municipal Storm Sewer System: Includes but is not limited to those facilities within the City by which stormwater may be conveyed to waters of the United States, including any roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, which is not part of a Publicly Owned Treatment Works.
 - (5) Non-Stormwater Discharge: Any discharge of a pollutant that is not entirely composed of stormwater.

- (6) Premises: Any building, lot parcel, real estate, or land or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.
- (7) Watercourse: Watercourse is defined as a river, stream, creek, watercourse, waterway, or channel, including any property over which the City of Hayward has an easement for drainage purposes duly recorded in the Office of the County Recorder of the County of Alameda.

SEC. 11-5.14 RESPONSIBILITY FOR ADMINISTRATION. This article shall be administered by the Director of Public Works. Where storm drain facilities or watercourses have been accepted for maintenance by the Alameda County Flood Control and Water Conservation District or other public agency legally responsible for certain watercourses, then the responsibility for enforcing the provisions of this article may be assigned by contract executed by the City and such agency to those public agencies over those watercourses for which they have accepted maintenance.

SEC. 11-5.15 CONSTRUCTION AND APPLICATION. This article shall be construed to assure consistency with the requirements of the federal Clean Water Act and acts amendatory thereof or supplementary thereto, applicable implementing regulations, and NPDES Permit No. CA0029831 and any amendment or revision thereto, or reissuance thereof.

SEC. 11-5.17 INVERSE CONDEMNATION. The provisions of this article shall not operate to deprive any landowner of substantially all of the value of his or her property or otherwise constitute an unconstitutional taking of property without compensation. If application of this article to a specific project would create a taking of property then, pursuant to this section the City Council may allow additional land uses, but only to the extent necessary to avoid a taking. Such uses shall be consistent with and carry out the purposes of this article as stated in section 11-5.12 above.

DISCHARGE REGULATIONS AND REQUIREMENTS

SEC 11-5.19 DISCHARGE OF POLLUTANTS. The discharge of non-stormwater discharges to the City storm sewer system is prohibited. Prohibited discharges include, but are not limited to polluted cooling water, chlorinated or chloraminated swimming pool water, hazardous or toxic chemicals, grease, animal wastes, detergents, solvents, pesticides, herbicides, fertilizers, and dirt. All discharges of material other than stormwater must be in compliance with a NPDES Permit issued for the discharge other than NPDES permit No. CA0029831. Exceptions to this prohibition are set forth in subsections (a) and (b) below.

- a. NPDES permitted non-stormwater discharges and discharges which are not sources of pollutants to waters of the state (as described in 40 C.F.R. 122.26(d)(2)(iv)(B)(1)) provided that the discharger is in full compliance with all requirements of the permit and other applicable laws or regulations.
- b. Discharges from the following activities will not be considered a source of pollutants to waters of the United States when properly managed in a manner satisfactory to the Director of Public Works: water line flushing or other discharges from potable water sources, landscape irrigation, lawn watering, irrigation water, diverted stream flows, rising ground waters, infiltration to separate storm drains, uncontaminated pumped ground water, foundation and footing drains, water from crawl space pumps, air conditioning condensation, springs, individual residential car washings, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, or flows from fire fighting.

Allowable discharges shall not cause any impairment in the beneficial uses or quality of water of the state as defined in the California Water Code or any special requirements of the Regional Water Quality Control Board, San Francisco Bay Region, or injure or interfere with the operation of any watercourses within the State.

SEC. 11-5.20 DISCHARGE IN VIOLATION OF PERMIT. Any discharge that would result in or contribute to a violation of NPDES Permit No. CA0029831, attached to this article as Attachment A, and any amendment or revision thereto, or reissuance thereof, either separately considered or when combined with other discharges, is prohibited. The person causing or responsible for the discharge shall be liable for the discharge, and shall defend, indemnify, and hold the City harmless in any administrative or judicial enforcement action relating to such discharge.

SEC. 11-5.21 ILLICIT DISCHARGE AND ILLICIT CONNECTIONS. The establishment, use, maintenance, or continuation of an illicit drainage connection to the City storm sewer system, and the commencement or continuation of any illicit discharges to the City storm sewer system is prohibited. This prohibition is expressly retroactive and applies to connections made in the past, regardless of whether made under a permit or other authorization or whether permissible under the law or practices applicable or in effect at the time of the connection.

SEC. 11-5.22 REDUCTION OF POLLUTANTS IN STORMWATER. Any person engaged in activities which will or may result in pollutants entering the City storm sewer system shall undertake all practicable measures to reduce such pollutants. Examples of activities that might result in pollutants entering the City storm sewer system include littering and ownership or use of facilities which may be a source of pollutants such as but not limited to parking lots, gasoline stations, industrial facilities, commercial facilities, and stores fronting City streets. The following are minimal requirements applicable to such persons:

- a. **Littering Prohibited.** No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, placed, left, or maintained, any 'refuse,' 'rubbish,' 'garbage,' or other discarded or abandoned objects, articles, and accumulations, in or upon any street, alley, sidewalk, storm drain, inlet, catch basin, conduit, or other drainage structures, business place, or upon any public or private lot of land in the City, so that the same might be or become a pollutant. Nor shall any person throw or deposit litter in any fountain, pond, lake, stream, or any other body of water in a park or elsewhere within the City. The occupant or tenant, or in the absence of occupant or tenant, the owner, lessee, or proprietor, of any real property in the City of Hayward that abuts a paved sidewalk shall maintain said sidewalk free of dirt or litter to the maximum extent practicable. Sweepings from said sidewalk shall not be swept or otherwise made or allowed to go into the gutter or roadway, but shall be disposed of in receptacles maintained on said real property as required for the disposal of garbage.
- b. **Standard of Maintenance for Parking Lots and Similar Structures.** Persons owning or operating a parking lot, a gasoline station, or a similar structure or uses shall clean the property as frequently and thoroughly as practicable in a manner that does not result in discharge of pollutants to the City storm sewer system.
- c. **Outdoor Storage of Materials.**
- (1) **Proper Outdoor Storage of Materials Required.** All applicable materials stored outdoors at a commercial or industrial establishment shall be managed in a manner that minimizes the discharge of pollutants to stormwater. Establishments covered by the General Industrial NPDES Permit promulgated by the California Regional Water Quality Control Board, San Francisco Bay Region for stormwater discharges associated with industrial activities, excluding construction activities, shall address this requirement in applicable provisions of their Stormwater Pollution Prevention Plans (SWPPPs).
- (2) **Protection Against Accidental Discharge.** Each property owner, its administrators, lessees/tenants, or successors, or any other persons in possession or control of the property who store applicable materials outdoors at a commercial or industrial establishment shall provide protection against the accidental discharge of prohibited materials to the City's storm sewer system or watercourse. Such protection may include, but is not limited to, secondary containment systems or any equivalent protective measures. Any secondary containment system that

includes the permanent modification of a building or site, or the addition of a building or structure, shall be submitted to the City's Planning Division and Building Division for approval in accordance with applicable codes. All facilities necessary to prevent the accidental discharge of prohibited materials to the City's storm sewer system or watercourse shall be provided and maintained at the property owner's or operator's expense.

- (3) Report of Accidental Discharge to the Storm Drain. The property owner, its administrators, successors, or any other persons shall notify the City of any accidental discharge to the City's storm sewer system or watercourse as described in Section 11-5.26 of this Code.
- (4) Posted Notice. A notice advising employees of the requirements of Section 11-5.26 and the telephone number to call in case of such an accidental discharge shall be permanently posted in a conspicuous place on the premises of each commercial or industrial establishment.

SEC. 11-5.23 WATERCOURSE PROTECTION. Every person owning property through which a watercourse passes, or such person's lessee or tenant, shall keep and maintain that part of the watercourse within the property reasonably free of trash, debris, excessive vegetation, and other obstacles which would pollute, contaminate, or significantly retard the flow of water through the watercourse; shall maintain existing privately owned structures within or adjacent to a watercourse so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse; and shall not remove healthy bank vegetation beyond that actually necessary for its maintenance nor remove healthy bank vegetation in a manner so as to increase the vulnerability of the watercourse to erosion.

No person shall commit or cause to be committed any of the following acts, unless a written permit has first been obtained from the Director of Public Works:

- a. Discharge into or connect any pipe or channel to a watercourse;
- b. Modify the natural flow of water in a watercourse;
- c. Carry out development within a watercourse setback;
- d. Deposit in, plant in, or remove any material from a watercourse including its banks, except as required for necessary maintenance;
- e. Construct, alter, enlarge, connect to, change, or remove any structure in a watercourse; or

- f. Place any loose or unconsolidated material along the side of or within a watercourse or so close to the side as to cause a diversion of the flow, or to cause a probability of such material being carried away by stormwaters passing through such watercourse.

INSPECTION AND ENFORCEMENT

SEC. 11-5.24 AUTHORITY TO INSPECT. Whenever necessary to make an inspection to enforce any of the provisions of this article, or whenever an Authorized Enforcement Official has reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a violation of the provisions of this article, the official may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the official by this article; provided that (1) if such building or premises be occupied, he or she shall first present proper credentials and request entry; and (2) if such building or premises be unoccupied, he or she shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.

Any such request for entry shall state that the property owner or occupant has the right to refuse entry and that in the event such entry is refused inspection may be made only upon issuance of a search warrant by a duly authorized magistrate. In the event the owner or occupant refuses entry after such request has been made, the official is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary by the Authorized Enforcement Official to carry out the objectives of this article, including but not limited to random sampling and/or sampling in areas with evidence of stormwater contamination, illicit discharges, discharge of non-stormwater to the stormwater system, or similar factors.

SEC. 11-5.25 AUTHORITY TO SAMPLE AND ESTABLISH SAMPLING DEVICES. An Authorized Enforcement Official shall have the right to establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided in this article, the official may take any samples deemed necessary to aid in the pursuit of the inquiry or in the recordation of the activities on site.

SEC. 11-5.26 NOTIFICATION OF SPILLS. As soon as any person in charge of a facility, or responsible for emergency response for a facility, has knowledge of any confirmed or unconfirmed release of materials, pollutants, or waste which may result in pollutants or non-stormwater discharges entering the City storm sewer system or watercourse, such person shall take all necessary steps to ensure the discovery and containment and clean up of such release and shall notify the City of the occurrence by telephoning an Authorized Enforcement Official.

SEC. 11-5.31 CONCEALMENT. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this article shall constitute a violation of such provision.

SEC. 11-5.32 ACTS POTENTIALLY RESULTING IN VIOLATION OF FEDERAL CLEAN WATER ACT OR STATE LAW. Any person who violates any provision of this article, or any provision of any permit issued pursuant to this article, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, may also be in violation of the federal Clean Water Act and state law, including the Porter-Cologne Act, and may be subject to the sanctions of those laws including civil and criminal penalty. Any enforcement action authorized under this article shall also include notice to the violator of such potential liability.

SEC. 11-5.33 VIOLATIONS DEEMED A PUBLIC NUISANCE. In addition to the penalties provided herein, any condition caused or permitted to exist in violation of any of the provisions of this article is a threat to the public health, safety, and welfare and is declared and deemed a public nuisance, and may be summarily abated or restored by any Authorized Enforcement Official and civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the City Attorney.

The cost of such abatement and restriction shall be borne by the owner of the property and the cost thereof shall be a lien upon and against the property and such lien shall continue in existence until the same shall be paid. If the lien is not satisfied by the owner of the property within three months after the completion by the Authorized Enforcement Official of the removal of the nuisance and the restoration of the property to its original condition, the property may be sold in satisfaction thereof in a like manner as other real property is sold under execution.

If any violation of this article constitutes a seasonal and recurrent nuisance, the City Council shall so declare. Thereafter such seasonal and recurrent nuisance shall be abated every year without the necessity of any further hearing.

SEC. 11-5.34 CIVIL ACTIONS. In addition to any other remedies provided in this article, any violation of this article may be enforced by civil action brought by the City. In any such action, the City may seek, and the Court shall grant, as appropriate, the following remedies:

- a. A temporary or permanent injunction;
- b. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation and for the reasonable costs of preparing and bringing legal action under this article;

- c. Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation; and
- d. Compensatory damages for loss or destruction to water quality, wild-life, fish, and aquatic life.

Any assessments ordered under subsection (d) shall be paid to the City to be used exclusively for costs associated with monitoring and establishing stormwater discharge pollution control systems and implementing or enforcing the provisions of this article.

SEC. 11-5.35 ADMINISTRATIVE ENFORCEMENT POWERS. In addition to the other enforcement powers and remedies established by this article, any Authorized Enforcement Official has the authority to utilize the administrative remedies set forth below.

- a. **Cease and Desist Orders.** When an Authorized Enforcement Official finds that a discharge has taken place or is likely to take place in violation of this article, the official may issue an order to cease and desist such discharge, or practice, or operation likely to cause such discharge and direct that those persons not complying shall: (1) comply with the requirement; (2) comply with a time schedule for compliance; and (3) take appropriate remedial or preventive action to prevent the violation from recurring.
- b. **Notice to Clean.** Whenever an Authorized Enforcement Official finds any oil, earth, dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste, or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of land or upon any parcel of land or grounds which may result in an increase in pollutants entering the City storm sewer system or a non-stormwater discharge to the City storm sewer system, he or she shall give notice to remove such oil, earth, dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste, or other material, in any manner that he or she may reasonably provide.

SEC. 11-5.36 REMEDIES NOT EXCLUSIVE. Remedies under this article are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

COORDINATION WITH OTHER PROGRAMS

SEC. 11-5.37 COORDINATION WITH HAZARDOUS MATERIALS INVENTORY AND RESPONSE PROGRAM. The first revisions of the business plan for any facility subject to the City's hazardous materials inventory and response program shall include a program for compliance with this article, including the prohibitions on non-stormwater discharges and illicit discharges, and the requirements to reduce stormwater pollutants to the maximum extent practicable.

SEC. 11-5.38 STORMWATER TREATMENT MEASURES REQUIRED

- a. All Development Projects shall include Stormwater Treatment Measures to reduce water quality impacts of urban runoff from the entire project site for the life of the project. Such measures shall be in accordance with the guidelines contained in the City of Hayward's Site Design Standards and Guidance, including but not limited to flow duration and volume control requirements. All development projects shall also abide by the rules set forth in the NPDES municipal stormwater discharge permit issued to the City by the California Regional Water Quality Control Board, San Francisco Bay Region. Furthermore, all Group 1 and Group 2 development projects, as well as other development projects deemed appropriate by the City, are required to apply the City of Hayward's Source Control Measures List to each respective project.
- b. All Significant Redevelopment Projects shall include Stormwater Treatment Measures to reduce water quality impacts of urban runoff for the life of the project.
 - (1) Significant Redevelopment Projects that result in an increase of, or replacement of, more than fifty (50) percent of the impervious surface of a previously existing development shall include Stormwater Treatment Measures sufficient to reduce water quality impacts of urban runoff from the entire site for the life of the project.
 - (2) Significant Redevelopment Projects that result in an increase of, or replacement of, fifty (50) percent or less of the impervious surface of a previously existing development shall include Stormwater Treatment Measures sufficient to reduce water quality impacts of urban runoff from the increased or replaced portion of the site for the life of the project.
- c. Stormwater Treatment Measures must be incorporated into all applicable plan documents. All plan documents and construction activities are subject to inspection and approval by the City.
- d. No final building or occupancy permit shall be issued without the written certification of the Public Works Director or his or her designee that the requirements of this article have been satisfied. Such certification shall be in the form prescribed by the City and shall not be issued without payment of all applicable fees, if any, which may be imposed for administration of this article.

**SEC. 11-5.39 INSPECTION AND MAINTENANCE OF STORMWATER
TREATMENT MEASURES**

- a. The property owner, its administrators, successors, or any other persons in possession or control of the property, including any homeowners association, shall take all necessary actions to ensure that Stormwater Treatment Measures or other required measures are properly maintained so that they continue to operate as originally designed and approved, for the life of the development. The Public Works Director may require verification of proper maintenance be submitted to the City. Any property owner required by this article to construct, install, operate or maintain Stormwater Treatment Measures or other measures shall record a document evidencing the permanent maintenance requirement and binding all successors in interest to the maintenance obligation.
- b. Upon transferring ownership of the property, any property owner required by this article to construct, install, operate, or maintain Stormwater Treatment Measures or other measures shall provide the new owners with a current copy of this Chapter, and inform the new owners in writing of their obligation to properly operate and maintain the Stormwater Treatment Measures.
- c. It shall be unlawful to alter, modify, change, or remove any Stormwater Treatment Measures or other measures without first obtaining from the Public Works Director or his or her designee written certification that the requirements of this article have been satisfied.

**SEC. 11-5.40 BEST MANAGEMENT PRACTICES DURING
CONSTRUCTION.** Any construction contractor performing work in the City shall adhere to the City of Hayward's Site Design Standards and Guidance as it relates to construction Best Management Practices (BMPs).

SEC. 11-5.41 COMPLIANCE WITH BEST MANAGEMENT PRACTICES.

Where best management practices guidelines or requirements have been adopted by any federal, State of California, regional, and/or City agency, for any activity, operation, or facility which may cause or contribute to stormwater pollution or contamination, illicit discharges, and/or discharge of non-stormwater to the stormwater system, every person undertaking such activity or operation, or owning or operating such facility, shall comply with such guidelines or requirements.

**SEC. 11-5.42 AUTHORITY TO ENFORCE INDUSTRIAL STORMWATER
PERMITS.** The City of Hayward shall have the authority to enforce the permit requirements of any individual, group, or general stormwater discharge permit issued to any industrial facility by the United States Environmental Protection Agency, State of California Water Resources Control Board, or the San Francisco Bay Regional Water Quality Control Board to the extent that such authority is delegated to the City by the issuing agency of government.

SEC. 11-5.43 AUTHORITY TO ENFORCE CONSTRUCTION

STORMWATER PERMITS. The City of Hayward shall have the authority to enforce the permit requirements of any individual, group, or general stormwater discharge permit issued to any construction activity by the Environmental Protection Agency, the State of California Water Resources Control Board, or the San Francisco Bay Regional Water Quality Control Board to the extent that such authority is delegated to the City by the issuing agency of government.

FUNDING PROVISIONS

SEC. 11-5.50 CITY OF HAYWARD STORMWATER SYSTEM UTILITY

FUND. The City of Hayward Stormwater System Utility Fund (hereinafter "Fund") is hereby established to provide funding for the Stormwater Management and Urban Runoff Control Program. The Fund may be expended for the following:

- a. All activities and resultant expenses required under the Alameda Countywide Clean Water Program;
- b. All activities and resultant expenses required by the NPDES permit which authorizes and regulates discharge from the City of Hayward stormwater collection and conveyance system;
- c. All activities and resultant expenses associated with the maintenance and operation of the stormwater collection and conveyance system;
- d. Capital expenses associated with the repair, replacement, and capital improvement of the stormwater collection and conveyance system;
- e. All expenses associated with the maintenance, operation, and capital requirements of any stormwater treatment system which may be prospectively required by state or federal law;
- f. All expenses for any activities directly related to any of the foregoing.

SEC. 11-5.51 FUNDING PROVISION - DEFINITIONS.

- a. **Land use category:** That category of land use assigned to a parcel of real property as shown on the most current official assessment roll of the Alameda County Assessor.
- b. **Parcel:** A unit of real property in one ownership as shown on the most current official assessment roll of the Alameda County Assessor; **parcel size** means the area of such a unit, measure in acres, as determined from records maintained by Alameda County or the City of Hayward.

- c. Runoff factor: The indicator of stormwater generation of a parcel and is based on the average ratio of impervious area to total parcel area for a category of land use.

SEC. 11-5.52 REVENUE SOURCE. The City of Hayward Stormwater System Utility Fund shall derive revenue from the following sources:

- a. Reimbursements and subventions made available through the Alameda Countywide Clean Water Program;
- b. Reimbursements and subventions made available by any other governmental entity for the purpose of supporting any of the activities of the City of Hayward Stormwater Management and Urban Runoff Control Program;
- c. Any other funds the City Council directs be allocated to the Stormwater System Utility Fund from money available to it, including but not limited to, money in its General Fund; and
- d. Service charges assessed by the City of Hayward in accordance with the provisions of this article.

SEC. 11-5.53 ESTABLISHMENT OF SERVICE CHARGE. Every person or entity owning real property within the City of Hayward, or owning property not within the incorporated City limits but discharging stormwater to a collection and conveyance system owned and operated by the City of Hayward, shall pay a service charge calculated in accordance with the provisions of this article as set forth from time to time by resolution of the City Council.

SEC. 11-5.54 CALCULATION OF SERVICE CHARGES. Service charges shall be calculated in a manner which distributes, as equitably as possible, stormwater system costs to users of the system proportionate to the benefit received. In consideration of the fact that stormwater runoff and consequent stormwater system loading is directly related to the physical size and impervious surface area of any parcel of land, those factors shall be utilized in the calculation of service charges. For the purpose of this section, impervious surface area shall be represented by the runoff factor established for parcels on the basis of use and as otherwise determined by the Alameda County Flood Control and Water Conservation District. In addition, other factors which disproportionately affect stormwater system costs and which are attributable to any user or class of users may be utilized in the setting of rates for that user or class of users.

SEC. 11-5.55 COLLECTION; INTEREST AND PENALTIES. The City Manager is authorized to have the charges imposed by this article collected by the County of Alameda in conjunction with the County's collection of property tax revenues for the City of Hayward. In the event that the County of Alameda collects the charges imposed by this

article, the imposition of penalties, additional fees, and interest upon owners who fail to remit any charge imposed by this article or who fail to remit any delinquent remittance under this ordinance shall be subject to and governed by the rules, regulations, and procedures utilized by the County of Alameda in its collection of property taxes and charges for the City of Hayward, and in its collection of this additional charge for the City of Hayward.

Every penalty imposed and such interest as accrues under the provisions of this article shall become a part of the charges herein required to be paid.

SEC. 11-5.56 DELINQUENT CHARGES REMEDIES.

- a. Delinquent charges are hereby made a lien upon the real property served by the stormwater system;
- b. The amount of any charge, penalty, and interest imposed under the provisions of this article shall be deemed a debt to the City."

Section 2. SEVERANCE. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 3. This Ordinance shall become effective thirty (30) days after adoption by the City Council.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 20th day of September, 2005, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the _____ day of September, 2005, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DRAFT

ORDINANCE NO. _____

**ORDINANCE AMENDING SECTION 7-1.65 OF THE
PUBLIC WORKS ORDINANCE RELATING TO DRIVEWAY
MATERIALS**

Section 1. The second paragraph of Sec. 7-1.65 of the Hayward Municipal Code "Driveway Specifications" is hereby amended to read as follows:

"Driveways shall be constructed of permanent materials, which include portland cement concrete, asphaltic concrete, bricks, or pavers; however, in the case of temporary work, the Director of Public Works may permit other materials to be used."

Section 2. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 3. This Ordinance shall become effective thirty (30) days after adoption by the City Council.

INTRODUCED at a regular meeting of the City Council of the City of
Hayward, held the 20th day of September, 2005, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward
held the _____ day of September, 2005, by the following votes of members of said City
Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward